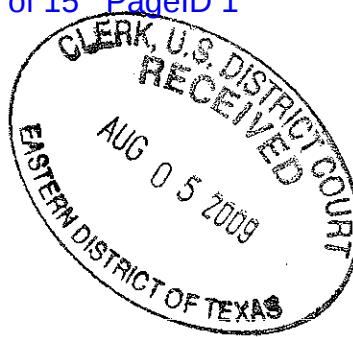


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
Tyler DIVISION

Form To Be Used By A Prisoner in Filing a Complaint
Under the Civil Rights Act, 42 U.S.C. § 1983



JEFFERY SCOTT LEWIS # 696767

Plaintiff's name and ID Number

Powledge Unit

Place of Confinement

CASE NO. 6:09cv362
(Clerk will assign the number)

v KENNETH R. MOORE

P.O. Box 310, Terrell, Texas 75160

Defendant's name and address

Toby Hernandez

1898 West Moore Ave., Terrell, Texas

Defendant's name and address

MURPHY USA

1898 West Moore Ave., Terrell, Texas

Defendant's name and address

(DO NOT USE "ET AL.")

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE. ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate District Court, the Division and an address list of the Divisional Clerks.

FILING FEE AND IN FORMA PAUPERIS

1. In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire \$350 filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion (s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

I. PREVIOUS LAWSUITS:

- A. Have you filed *any* other lawsuits in state or federal court relating to your imprisonment? YES NO
- B. If your answer to "A" is "yes," describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)

1. Approximate date of filing lawsuit: N.A.
2. Parties to previous lawsuit:
Plaintiff(s) N.A.
Defendant(s) N.A.
3. Court: (If federal, name the district; if state, name the county.) N.A.
4. Docket Number: N.A.
5. Name of judge to whom case was assigned: N.A.
6. Disposition: (Was the case dismissed, appealed, still pending?)
N.A.
7. Approximate date of disposition: N.A.

II. PLACE OF PRESENT CONFINEMENT: Powledge Unit

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution? YES NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Jeffery Scott Lewis,
1400 FM 3452, Palestine, Texas, 75803

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Kenneth R. Moore, Detective for
Terrell Police Service

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

False arrest, illegal detention, malicious prosecution, abuse of process,
Civil conspiracy.

Defendant #2: Toby Hernandez, Murphy USA Co.,
1898 West Moore Ave, Terrell, Texas

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

abuse of process,
False arrest, illegal detention, malicious prosecution, Civil conspiracy

Defendant #3: Murphy USA, 1898 West Moore Ave,
Terrell, Texas, (employer of Toby Hernandez)

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Respondent superior for the actions of Toby Hernandez

Defendant #4: _____

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #5: _____

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

Plaintiff alleges conspiracy to violate his civil rights against each of the defendants. Each of the defendants conspired to violate Plaintiff's constitutional rights to be free from illegal search and seizure and illegal arrest and detention under Section 1983 of the United States Constitution. Additionally Plaintiff alleges pendent state claims against the defendants for abuse of process, malicious prosecution and civil conspiracy. Plaintiff asserts defendants Moore and

VI. RELIEF: State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

actual and compensatory damages of not less than \$5,000,000 and defendant Murphy USA for exemplary damages of \$4,50,000,000

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases:

None

B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if known to you.

357014, 609623, 696767

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? YES NO

B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): N.A.

2. Case Number: N.A.

3. Approximate date sanctions were imposed: N.A.

4. Have the sanctions been lifted or otherwise satisfied? N.A. YES NO

Hernandez were responsible for initiating Plaintiff's arrest under color of state law by conspiring to falsely identify Plaintiff as the person who robbed the defendants Hernandez and Murphy USA. Plaintiff further alleges respondeat superior against Murphy USA as the employer of defendant Hernandez. Defendant Hernandez was an employee of Murphy USA and was acting within the scope of that employment in the furtherance of Murphy USA's business at the time these claims arose.

Plaintiff's claims stem from his arrest for aggravated robbery on January 14, 2008, in Terrell, Texas. The robbery was alleged to

STATEMENT OF CLAIM ... PAGE 3...

have occurred on Monday, October 29, 2007 at Murphy USA located at 1898 West Moore Avenue in Terrell, Texas. The defendant Toby Hernandez an employee of Murphy USA had informed the Terrell Police that he had been robbed of Murphy's bank deposit for that day.

Defendant Kenneth R. Moore is a Texas Police officer with the Terrell Police Service and was assigned to investigate the above enumerated incident. On December 6, 2007 after meeting with defendant Hernandez defendant Moore submitted a sworn affidavit to a Justice of the Peace in Terrell, Texas. (see

STATEMENT OF CLAIM... PAGE 4...

attached affidavit). In Paragraph 4 of the affidavit's "Probable Cause Page" was the following statement contributed to defendant Hernandez:

"He described this suspect as a black male around 5'7" and he weighed about 250 to 300 pounds. The suspect was not wearing a mask or any item to conceal his facial features and the victim was able to get a very close look at his face. I later spoke with victim after he had time to reflect back on the incident searching for details to help identify the suspect. He provided me with the following: he said that he remembered the suspect

STATEMENT OF CLAIM... PAGE 5...

having distinctive markings under both eyes which referred to as "freckles." He said that he remembered the suspect to look in his thirties because he had a "baby face?"

In Paragraph 5 defendant Moore stated that the victim had received information that a subject named Jeff Lewis was talking to someone about committing this aggravated robbery. Defendant Moore then stated in the affidavit that he knew a Jeffrey Scott Lewis and pulled his booking photograph and immediately noticed the distinctive markings below both eyes that matched what was described by the victim.

Then in Paragraph 6 defendant Moore stated that he prepared a photograph

STATEMENT OF CLAIM ... PAGE 6 ...

line up and presented it to the victim and he immediately picked the defendant as the person that robbed him at Gun Point on October 29, 2007. He even commented again about the markings under Plaintiff's eyes.

The Warrant was issued on the basis of this affidavit and pursuant to the warrant Plaintiff was arrested on January 14, 2008 and charged with aggravated robbery.

Plaintiff asserts that his arrest pursuant to the arrest warrant was an unlawful arrest because the arrest warrant was fatally defective. Defendant Moore deliberately and knowingly made false statements in the affidavit and those false statements were necessary to the finding of Probable cause.

STATEMENT OF CLAIM - PAGE 10

Plaintiff specifically states that the affiant lied when he stated that Plaintiff has freckles under his eyes, and Plaintiff further avers that he does not have any kind of distinctive markings under either of his eyes. Also Plaintiff avers that there does not exist any booking photograph that displays distinctive markings under his eyes as was sworn to by defendant Moore in the affidavit. Plaintiff's arrest on January 14, 2008 pursuant to the arrest warrant was in violation of Plaintiff's Fourth Amendment right.

Plaintiff alleges that defendant Moore and defendant Hernandez committed an act of civil conspiracy by conspiring to accuse Plaintiff of a crime that they knew he did not

STATEMENT OF CLAIM ... PAGE 8...

commit.

Plaintiff contends that defendants Moore and Hernandez committed an act of abuse of Process against him when they made an improper and perverted use of the arrest Warrant Process when they fraudently identified Plaintiff in the affidavit in support of the arrest warrant, a use neither warranted nor authorized by the process. Plaintiff further states that the defendants had the ulterior motive of falsely arresting Plaintiff in their exercising such an improper and perverted use of the process. As a result of the defendants' actions Plaintiff has suffered loss of freedom, financial income and alienation from his family.

STATEMENT OF CLAIM... PAGE 9...

Plaintiff also alleges that Defendants Moore and Hernandez committed an act of malicious prosecution against him when they maliciously initiated a felony criminal prosecution against him for the crime of aggravated robbery. The defendants initiated the prosecution against Plaintiff by falsely and intentionally identifying him as the person who committed the crime of aggravated robbery. The defendants identification was submitted to a magistrate in an affidavit in support of their reavest for an arrest warrant for Plaintiff. The charge of aggravated robbery was subsequently rejected and further DNA evidence has established Plaintiffs' innocence. Plaintiff further asserts that the defendants did not have probable cause for the initiation of an aggravated robbery prosecution against him. The filing

STATEMENT OF CLAIM ... PAGE 10 ...

of the aggravated robbery charge against Plaintiff was prompted by malice on the part of the defendants. Their actions has caused Plaintiff loss of freedom and his financial livelihood in terms of employment. In this case there was no probable cause to suspect Plaintiff of the crime of aggravated robbery other than the false statements in the arrest affidavit identifying Plaintiff as the robber. Without the false statements the remaining content of the affidavit does not reveal the existence of probable cause as to the Plaintiff.

C. Has any court ever warned or notified you that sanctions could be imposed? YES NO

D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed. (If more than one, use another piece of paper and answer the same questions.)

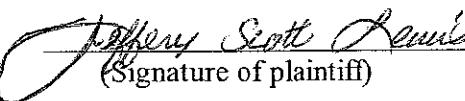
1. Court that imposed warning (if federal, give the district and division): N.A.

2. Case Number: N.A.

3. Approximate date warnings were imposed: N.A.

Executed on: _____

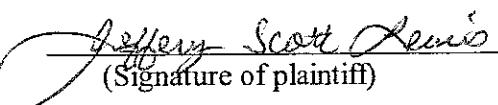
DATE


(Signature of plaintiff)

PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire \$350 filing fee and costs assessed by the Court, which shall be deducted in accordance with the law from my inmate account by my custodian until the filing fee is paid.

Signed this 3 day of AUGUST, 2009.
(Day) (month) (year)


(Signature of plaintiff)

WARNING: The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limited to monetary sanctions and/or the dismissal of this action with prejudice.

Rowledge UNIT
TC 1400 FM 3452
PALESTINE TX 75803



EAST TEXAS P&DC 757-218
TUE 04 AUG 2009 PM

CLERK, U.S. District Court
PRO SE Division
211 W. FERGUSON, Room 106
TYLER, TX 75702

